

A. G. Contract No. KR930386TRN  
ECS File: JPA 93-40  
Project: STP-YTN-0(1)P  
Fund: SS296 01C  
Section: Various AC Overlays

**INTERGOVERNMENTAL AGREEMENT**

BETWEEN

THE STATE OF ARIZONA

AND

THE TOWN OF YOUNGTOWN

THIS AGREEMENT is entered into 12 MAY, 1993,  
pursuant to Arizona Revised Statutes, Sections 11-951 through  
11-954, as amended, between the STATE OF ARIZONA, acting by and  
through its DEPARTMENT OF TRANSPORTATION (the "State") and the  
TOWN OF YOUNGTOWN, acting by and through its TOWN COUNCIL  
("Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes  
Section 28-108 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has delegated  
to the undersigned the authority to execute this agreement on  
behalf of the State.

2. The Town is empowered by Arizona Revised Statutes  
Section 48-572 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has  
authorized the undersigned to execute this agreement on behalf  
of the Town.

3. Congress has authorized appropriations for, but not  
limited to, the construction of streets and primary, feeder and  
farm-to-market roads; the replacement of bridges; the  
elimination of roadside obstacles; and the application of  
pavement markings.

4. Such project within the boundary of the Town has been  
selected by the Town; the field survey of the project has been  
completed; and the plans, estimates and specifications have  
been prepared and, as required, submitted to the Federal  
Highway Administration ("FHWA") for approval.

NO. <u>17570</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>05/12/93</u>
<u>Richard Mahoney</u> Secretary of State
By <u>Wm. J. Greenup</u>

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The work embraced by this agreement and the estimated cost are as follows: AC OVERLAYS, VARIOUS LOCATIONS

Estimated Project Cost (incl. 15% CE cost)	\$ 295,539.00
Federal Aid Funds @ 94.3% of \$295,539.00	278,693.00
Town Funds @ 5.7% of \$295,539.00	16,846.00
Two percent surcharge	5,911.00
Total Town Funds	\$ 22,757.00*

\* This includes a two percent (2%) surcharge per ADOT Local Government Engineer memo of October 1991.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of FHWA and the Town, award the contract, enter into a contract with a firm to whom the award is made for the construction of the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of the Standard Specifications for Road and Bridge Construction of the Highways Division, Arizona Department of Transportation. Further, the State will enter into a Project Agreement with FHWA covering the work embraced in said contract or in this agreement and will request the maximum federal funds available.

b. The State will furnish Town with a copy of the proposed Project Agreement to be entered into by the State and FHWA, and any Railroad Company Agreement necessary for the full completion of this project. Upon approval of the terms and conditions of the Project Agreement and any State-Railroad Company Agreement by the Town, the agreements shall be incorporated in and made a part of this agreement by reference and shall have the same force and effect as though fully written herein. Further, the Town is bound by all the terms of any State-Railroad Company Agreement and will reimburse the State for the amount contracted for by and between the Railroad Company and the State acting as agent for the Town.

c. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of Town's deposit unless and until so authorized in writing by the Town.

2. Prior to the solicitation of bids, the Town shall deposit with State funds in the amount determined by the State to be necessary to match federal funds in the ratio required.

Upon completion of the construction contract, the State shall return to the Town any part of the funds deposited by Town remaining after Town's pro rata share of the cost, as finally fixed and determined by FHWA, has been paid.

3. The Town shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

4. The Town shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom.

5. The Town shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the Town.

6. Upon completion of construction, the Town shall provide for, at its own cost and as an annual item in its budget, proper maintenance, including, but not limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

7. The Town shall mark and sign school crossings and railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

8. By such regulation as it may by ordinance provide, the Town shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic at intersections and at such other locations as necessary.

### III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. The cost of the construction and construction engineering work covered by this agreement is to be borne by FHWA and Town, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, Town agrees to furnish and provide State with Town funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

Town of Youngtown  
Town Clerk  
12030 Clubhouse Square  
Youngtown, AZ 85363

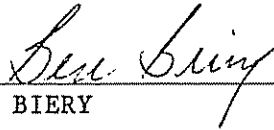
9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.


IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**TOWN OF YOUNGTOWN**

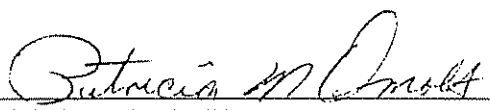
**STATE OF ARIZONA**

Department of Transportation

By   
BEN BIERY  
Mayor

By   
for ROBERT P. MICKELSON  
Deputy State Engineer

ATTEST

By   
PATRICIA OMOTH  
Town Clerk

JPA 93-40

RESOLUTION

BE IT RESOLVED on this 4th day of March 1993, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with Town of Youngtown for the purpose of defining responsibilities for construction and maintenance of various AC overlays in the Town (Local Government).

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Deputy State Engineer for approval and execution.

*Mary E. Potter*  
for LARRY S. BONINE  
Director

DRAFT

MINUTES OF REGULAR MEETING - MARCH 18, 1993

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DISPOSITION OF MINUTES

Regular Meeting - 2/18/93  
Special Meeting - 1/27/93 & 3/11/93

Mr. Semick requested a change on the March 11, 1993 Special Meeting minutes, the bottom of page 2 regarding a letter from Baptist Village. He requested to have the sentence changed to be more specific as to what Baptist Village was actually opposing.

MOTION. Mr. Kosanovich made the motion to approve the minutes as corrected. Mrs. Barron seconded the motion. The vote was taken. The motion passed unanimously.

COMMUNICATION REPORTS (See attached)

Payment of bills.

MOTION. Mr. Kosanovich made a motion to pay the town bills. Mr. Bradway seconded the motion. The vote was taken. The motion passed unanimously.

DISCUSSION AND ACTION TO ADOPT A RESOLUTION GRANTING A RENEWAL OF THE CABLE TELEVISION LICENSE FROM TIMES MIRROR CABLE TELEVISION OF HAVERHILL, INC.

MOTION. Mr. Kosanovich made the motion to adopt a resolution granting a renewal of the cable television license from Times Mirror Cable Television of Haverhill, Inc. Mr. Bradway seconded the motion.

Mrs. Sutton asked if the 15 years indicated in the renewal was a normal time limit for this type of licensing. She was told that this is a normal time limit. Also she remarked that the percentage rate that the Town would receive on the gross, had increased to 5%.

Town Attorney Calvin Brice read Resolution 93-6 by title.

The vote was taken. The motion passed unanimously.

DISCUSSION AND ACTION TO APPROVE A RESOLUTION REGARDING AN INTERGOVERNMENTAL AGREEMENT WITH ARIZONA DEPARTMENT OF TRANSPORTATION CONCERNING THE RECONSTRUCTION OF ALABAMA AND CONNECTICUT AVENUE.

Mr. Bradway asked Roy Goodenough, Public Works Director, to explain what this was all about.

DRAFT

MINUTES OF REGULAR MEETING - MARCH 18, 1993

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Mr. Goodenough said this is an agreement with the Arizona Department of Transportation to reconstruct Alabama and Connecticut Avenues. He said in addition, the County will widen 111th Avenue to allow a left turn lane into the bank and shopping areas.

Mr. Brice read the Resolution 93-7 in its entirety.

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF YOUNGTOWN, ARIZONA, APPROVING INTERGOVERNMENTAL AGREEMENT NO. JPA 93-40 BETWEEN THE TOWN AND THE ARIZONA DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, AND DECLARING AN EMERGENCY.

MOTION. Mr. Bradway made the motion to approve Resolution 93-7 regarding Intergovernmental Agreement with Arizona Department of Transportation concerning the reconstruction of Alabama Avenue and Connecticut Avenue. Mr. Kosanovach seconded the motion. The vote was taken. The motion passed unanimously.

DISCUSSION AND ACTION TO ACCEPT TOWN ATTORNEY CALVIN BRICE NOTICE OF RETIREMENT AND APPOINTING THE FIRM OF FAITH, LEDYARD, DAGILIS & NICKEL, PLC AS TOWN ATTORNEYS EFFECTIVE APRIL 1, 1993 UNTIL FURTHER NOTICE.

MOTION. Mr. Kosanovich made a motion to accept the retirement of Calvin Brice and appoint the firm of Faith, Ledyard, Dagilis & Nickel, PLC as Town attorneys effective April 1, 1993 until further notice. Mr. Bradway seconded the motion.

Mr. Semick objected to this agenda item. He stated that the retirement of one and the hiring of another should be separate items. He feels the matter should be postponed until April.

Mrs. Sutton said the decision to retire was Attorney Brice's to make and of course we would need a replacement.

The vote was taken. The motion passed with Mr. Semick voting, "Present."

PERSONNEL ACTION

- A. DISCUSSION AND ACTION TO RATIFY THE HIRING OF ELSIE JOHNSTON, CODE ENFORCEMENT OFFICER, GRADE 7, STEP A, \$7.01/HR EFFECTIVE 2/25/93.



APPROVAL OF THE YOUNGTOWN TOWN ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the TOWN OF YOUNGTOWN and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

DATED this 18<sup>th</sup> day of May 7 March, 1993.

Calvin H. Brice

Town Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS  
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

MAIN PHONE : 542-5025  
TELECOPIER : 542-4085


INTERGOVERNMENTAL AGREEMENT  
DETERMINATION

A. G. Contract No. KR93-0386-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 10<sup>th</sup> day of May, 1993.

GRANT WOODS  
Attorney General

  
JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

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